

REMARKS/ARGUMENTS

This is a full and complete response to the Office Action dated November 13, 2009, with a shortened statutory period for response set to expire February 13, 2010. Please consider the claims pending for the reasons discussed below.

Claims 19-55 are pending in the application and remain pending following entry of this response.

Claim Rejections - 35 U.S.C. § 102

Claims 19-23, with at least claims 19, 28, 31-32 and 41, are rejected under 35 U.S.C. § 102(b) as being allegedly anticipated by *Servais et al.* (U.S. Patent No. 6,141,388, hereinafter "*Servais*").

Applicants respectfully traverse this rejection.

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). "The identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). The elements must be arranged as required by the claim. *In re Bond*, 910 F.2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990).

In this case, *Servais* fails to teach each and every element recited in the rejected claims. Applicants will use, illustratively, rejected claim 28 for responding to the Examiner's allegations. For example, Applicants respectfully submit that *Servais* at least fails to teach "determining a threshold for the hypothesized data transmission based on samples received for the hypothesized data transmission" or "comparing the metric against the threshold to provide an output indicating whether or not the data transmission is deemed to have been received" as recited in claim 28.

In the Office Action, the Examiner erroneously refers to col. 9, lines 1-20 of *Servais* as teaching these elements. This section is included here for convenience:

...understood that, on various communication networks, both voice frames and control frames such a Fast Associated Control Channel (FACCH) frames may be sent on the same physical channel. A received traffic frame may therefore be either voice or FACCH and must preferably be checked against both. Therefore, each frame may be convolutionally decoded as if it were FACCH and then convolutionally decoded as if it were voice (voice and FACCH typically have different convolutional codes in known systems). In estimating received signal quality according to the methods of the present invention, the Viterbi final decision metric from either the voice channel decode or the FACCH channel decode may then be selected for mapping. As most frames are typically voice, according to one embodiment of the present invention, all frames are treated as voice and the voice channel decode metric is used for generating the received signal quality estimate. In an alternative embodiment, both the voice and FACCH decode metrics are evaluated and compared and the better metric is selected for generating the received signal quality estimate.

This section clearly does not teach "determining a threshold for the hypothesized data transmission based on samples received for the hypothesized data transmission" as recited in claim 28. Further, while there is a comparison of voice and FACCH decode metrics, there is no comparison with a threshold.

For at least these reasons, Applicants submit claim 28 is allowable over the art of record. Claims 19, 31, 32, and 41 recite similar elements as claim 28 that are not taught in *Servais*. Accordingly, Applicants submit these claims, as well as their dependents, are allowable over the art of record and respectfully request withdrawal of this rejection.

Claim Rejections – 35 U.S.C. § 103

Claims 24-55 are rejected under 35 USC § 103(a), as being allegedly unpatentable over *Molnar* (U.S. Patent No. 7,035,359) in view of *Servais*.

Applicants respectfully traverse this rejection.

The Examiner bears the initial burden of establishing a prima facie case of obviousness. See MPEP § 2141. Establishing a prima facie case of obviousness begins with first resolving the factual inquiries of *Graham v. John Deere Co.* 383 U.S. 1 (1966). The factual inquiries are as follows:

- (A) determining the scope and content of the prior art;
- (B) ascertaining the differences between the claimed invention and the prior art;

- (C) resolving the level of ordinary skill in the art; and
- (D) considering any objective indicia of nonobviousness.

Once the Graham factual inquiries are resolved, the Examiner must determine whether the claimed invention would have been obvious to one of ordinary skill in the art.

Applicants respectfully submit that the Examiner has not properly characterized the teachings of the references and, as a result, has failed to ascertain the patentably distinct differences between the claimed invention and the cited art.

For example, the Examiner refers to block 910 in FIG. 9 of *Molnar* as teaching providing re-modulated symbols, but concedes that *Molnar* fails to teach "processing the received data symbols and the remodulated symbols to provide a detector output that indicates whether or not the data transmission is deemed to have been received" as recited in claim 24. However, the Examiner erroneously refers to *Servais* as teaching "detecting received data symbols and re-modulated symbols to provide a detector output."

Applicants respectfully submit that *Servais* does not mention re-modulated symbols at all. While the Examiner refers to "transmitted bits" in FIG. 3 as corresponding to "re-modulated symbols," Applicants respectfully submit that these transmitted bits are not re-modulated in any way and the Examiner's equating these bits to the claimed "re-modulated symbols" is done with no basis or explanation. As described in paragraph [0084] of the present application, remodulated symbols and samples of received symbols are processed to obtain reconstructed samples. No such processing is taught in *Molnar* or *Servais*.

For at least these reasons, Applicants submit claim 24 is allowable over the art of record. Claims 29, 37, 46, and 50 recite similar elements as claim 24 which are not taught by *Molnar* or *Servais*. Accordingly, Applicants submit these claims, as well as their dependents, are allowable over the art of record and respectfully request withdrawal of this rejection.

CONCLUSION

Therefore, for at least the reasons presented above with respect to all of the pending claims subsequent to entry of this response, Applicants assert that all claims are patentably distinct from all of the art of record. All objections and rejections having been addressed, it is

respectfully submitted that this application is in condition for allowance and a Notice to that effect is earnestly solicited. If any points remain in issue that the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

Charge Statement: For this application, the Commissioner is hereby authorized to charge any required fees or credit any overpayment to Deposit Account 17-0026.

Respectfully submitted,
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